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SEP 24 2004

TECHNOLOGY CENTER 3600

Evenson, McKeown, Edwards & Lenahan, PLLC
1200 G Street, N. W.
Washington, DC 20005

In re Application of	:	
Ulrich Hartmann et al.	:	DECISION ON PETITION
Application No. 08/309,343	:	TO WITHDRAW THE
Filed: September 8, 1994	:	HOLDING OF ABANDONMENT
For: SEEKER FOR TARGET-TRACKING	:	
MISSILES	:	

This is a decision on applicants' petition to withdraw the holding of abandonment, filed in the United States Patent and Trademark Office (USPTO), on February 5, 2004.

The petition is **DISMISSED**.

A review of the file reveals that a Notice of Allowability and a Notice of Allowance and Fee(s) Due (hereinafter "Notices") were mailed to the correspondence address of record on April 8, 2003. Since the issue fee was not timely received, the application was held abandoned and a Notice to that effect was mailed on December 12, 2003.

Applicants submit that the above Notices were never received and provide a declaration presumably to take advantage of the procedures outlined in 1156 O.G. 53 and MPEP 711.03(c) for withdrawing an abandonment in an application having a non-received Office correspondence.

There is a strong presumption that Office communication properly addressed and delivered to the United States Postal Services, was in fact delivered to the addressee. An allegation that the Office communication was not received must be overcome by a showing that it was not received.

The showing required to establish non-receipt of an Office communication must include all of the following requirements:

- (1) A statement from the practitioner stating the Office communication was not received by the practitioner;
- (2) A statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and

- (3) A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The docket records indicated above must include a copy of the list of all responses in the practitioner's office with the due date of September 4, 2003. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G.53 (November 16, 1993).

Practitioner submits a statement that the above-noted Notices were not received. Practitioner also attests to the fact that a search of the file jacket and docket records indicates that the Notices were not received and a copy of the docket record where the non-received Notices would have been entered as being due on and around the date of July 8, 2003 was submitted with the petition. Practitioner also submits that (1) a Request for Status, (2) a Change of Correspondence Address, and (3) a Change of Address and Associate Power of Attorney (Exhibit II) were all filed November 9, 2001.

A review of the record indicates that the three change of address requests were all filed on November 9, 2001. It is noted that Practitioner did not provide any guidance as to which address was to be used. The Change of Address and Associate Power of Attorney changing the correspondence address to the Evenson, McKeown, Edwards & Lenahan, PLLC address appearing above, was entered with the Notices being mailed to this address on April 8 2003.

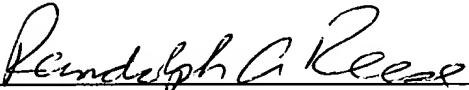
Since 1156 OG 53 is predicated upon the fact that applicants are able to receive the correspondence at the correspondence address of record, applicants' statement showing of non-receipt of the Notices needs to be reflective of the original correspondence address which was the correspondence address of record on April 8, 2003, the date the Notice of Allowability and the Notice of Allowance and Fee(s) Due were mailed.

Practitioner has provided no explanation regarding the simultaneous filing of three changes of address either at the time of filing or in the instant petition.

SUMMARY: The Petition to Withdraw the Holding of Abandonment is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181."

Correspondence with respect to a Petition to Withdraw the Holding of Abandonment under *Delgar Inc. v. Schuyler* should be mailed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



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RAR/vdb: 9/23/04

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